



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: OA/03633/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22<sup>nd</sup> July 2015**

**Determination Promulgated  
On 27<sup>th</sup> July 2015**

**Before**

**UPPER TRIBUNAL JUDGE FINCH**

**Between**

**ANXHELA MALAJ  
(No anonymity order made)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER – TIRANA**

Respondent

**Representation:**

For the Appellant: Ms. T. Murshed, instructed by B G Lawyers LLP  
For the Respondent: Ms J. Isherwood, Home Office Presenting Officer

**DECISION AND REASONS**

**History of Appeal**

1. The Appellant, who was born on 21<sup>st</sup> November 1993, is a national of Albania. She married her sponsor on 25<sup>th</sup> April 2013. He was born in Albania on 18<sup>th</sup> October 1980. She applied for entry clearance and settlement as his partner on 8<sup>th</sup> November 2013.
2. On 7<sup>th</sup> February 2014, the Respondent refused her application. He asserted that paragraph S-EC.2.2 of Appendix FM of the Immigration Rules applied because,

whether or not to her knowledge, a false document had been submitted in relation to her application. In particular, the Respondent noted that her sponsor had submitted his British passport, which stated that he had been born in Prishtina in Kosovo, but their “marriage certificate” showed that he had been born in Fier in Albania. The Entry Clearance Officer also said that he was not satisfied that the Appellant and her sponsor were in a genuine and subsisting relationship and that they intended to live together on a permanent basis or that their marriage was valid.

3. In the refusal letter the Entry Clearance Officer also relied on *A v Secretary of State for the Home Department* [2010] EWCA Civ 773.
4. The Appellant appealed against this decision and her appeal was heard by First-tier Tribunal Judge Braybrook on 18<sup>th</sup> March 2015. In her determination and reasons, promulgated on 30<sup>th</sup> March 2015, the Judge found that the Appellant’s marriage was genuine and subsisting and that she was able to meet the financial requirements of the Immigration Rules.
5. In a statutory declaration the sponsor had admitted that he had been born in Albania but had said that he was from Kosovo when he arrived in the United Kingdom, as a child, in 1997 and had not revealed his true nationality when applying for indefinite leave to remain and then British citizenship.
6. At the hearing the Judge accepted that paragraph S-EC.2.2 had to be read in the context of paragraph S-EC.2.1, which states that an “applicant will normally be refused on grounds of suitability if any of paragraphs S-EC.2.2 to 2.5 apply”. Therefore, a refusal under S-EC.2.2 was not mandatory.
7. She then noted that in the refusal letter the Entry Clearance Officer had relied on an extract from *AA (Nigeria)* which said that “it is highly likely therefore that where an applicant uses in all innocence a false document for the purpose of obtaining entry clearance, or leave to enter or to remain, it is because some other party, it might be a parent, or sponsor, or agent, has dishonestly promoted the use of that document. The response of a requirement of mandatory refusal is entirely understandable in such a situation”. As a consequence, she concluded that the Entry Clearance Officer had misdirected himself and considered that the refusal of entry clearance was mandatory. The Judge allowed the Appellant’s appeal on the limited basis that his decision had not been in accordance with the law.
8. The Respondent’s grounds of appeal against this decision referred to there being a decision under paragraph 320(7A) of the Immigration Rules when the decision had been taken under paragraph S-EC2.2. of Appendix FM to the Immigration Rules. Reliance was also placed on *KB (paragraph: 320(7A): “false representations”) Albania* [2009] UKAIT 00043. It was also asserted that the Judge’s decision was not clear.
9. First-tier Tribunal Judge Chohan granted permission to appeal on 1<sup>st</sup> June 2015 on the basis that the Judge’s decision had not been clear.

#### Error of Law Hearing

10. At the hearing before me the Home Office Presenting Officer accepted that the refusal had been taken under paragraph S-EC.2.2 and not paragraph 320(7A).

She also agreed that the Entry Clearance Officer's decision had not been in accordance with the law. The Appellant's counsel was in agreement with this analysis. They both submitted that the case should be remitted to the entry clearance officer for a fresh decision on the Appellant's application.

11. I also note that the case of *KB* was not of relevance as it considered circumstances in which a decision under paragraph 320(7A) would be lawful.
12. I also find that the decision reached by the First-tier Tribunal Judge was clear when paragraph 18 of her determination and reasons is given its plain and ordinary meaning. She said that "on the evidence overall and given that the Respondent in referring to *A* considered that the refusal was mandatory rather than discretionary, the appellant has satisfied me that the decision was not a proper exercise of the respondent's discretion and is therefore not in accordance with the law".
13. For all of these reasons I am satisfied that there were no material errors of law in the First-tier Tribunal Judge's determination and reasons and that her decision should not be set aside..

Conclusions:

1. The First-tier Tribunal Judge's determination and reasons did not include any material errors of law.
2. The decision stands and the application for entry clearance should be remitted to the Entry Clearance Officer for a fresh decision within the law.

Directions

1. The Appellant and the Respondent should both seek clarification as to the basis upon which the sponsor was initially granted discretionary leave to remain and then subsequently granted indefinite leave to remain and submit this evidence to the Entry Clearance Officer within 28 days of this decision being promulgated.

Nadine Finch

Date 24<sup>th</sup> July 2015

Upper Tribunal Judge Finch